

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**IN RE: REALPAGE, INC., RENTAL
SOFTWARE ANTITRUST
LITIGATION (NO. II)**

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**NO. 3:23-cv-03071
MDL No. 3071**

THIS DOCUMENT RELATES TO:

ALL CASES

**JOINT MOTION TO EXTEND
THE STRUCTURED DATA PRODUCTION DEADLINE**

Plaintiffs and Defendants hereby jointly submit this Motion to Extend the Structured Data Production Deadline, currently set for October 25, 2024, until December 20, 2024. The modification is supported by good cause and complies with Local Rule 16.01(h)(1). The parties have met and conferred telephonically on September 24, 2024 and jointly consent to this request.

I. BACKGROUND

A. Current Case Schedule

On February 26, 2024, the Court entered its Case Management Order setting the schedule for the above-captioned litigation. Under the section titled “Interim Deadlines for Production of Documents and Data,” the Court established certain interim deadlines for the production of structured data:

First Set of Structured Data Requests, and any data upon which Defendants intend to rely in their defense of the litigation, (together, “Structured Data”) shall be complete by **October 25, 2024**. Defendants shall each produce a sample of their Structured Data databases no later than **May 1, 2024**. Plaintiffs shall meet and confer with Defendants, including raising questions about sample productions by **June 5, 2024**, and Defendants shall answer questions about the form and contents of the Structured Data and any perceived deficiencies therein by **July 10, 2024**, in order to facilitate the timely production of an agreed upon scope of Structured Data by **October 25, 2024**.

The Case Management Order also includes the following deadlines:

Deadline	Date
First Set of Structured Data Production	October 25, 2024
Completion of Document Production	March 28, 2025
Requests for Admission	August 21, 2025
Fact Discovery Deadline	November 21, 2025
Expert Opening Reports	February 19, 2026
Expert Rebuttal Reports	April 20, 2026
Reply Reports	June 4, 2026
Opening Motion for Class Cert.	July 20, 2026
Daubert Motions – Opening Reports	July 20, 2026
Opposition to Motion for Class Cert.	September 7, 2026
Daubert Motions – Rebuttal Reports; Opposition to Opening Report Motions	September 7, 2026
Reply in Support of Motion for Class Cert.	October 7, 2026
Daubert Motions- Opposition to Rebuttal Report Motions; Replies to support Opening Report Motion	October 7, 2026
Daubert Motions – Replies to support Rebuttal Report Motion	November 6, 2026
Hearing on Class Cert and Daubert	November or December, 2026
Motions for Summary Judgment & Statement of Undisputed Material Facts	March 1, 2027
Responses to Summary Judgment Motions & Statements of Undisputed Material Facts	April 30, 2027
Replies to Summary Judgment Motions	June 14, 2027
Argument on Summary Judgment Motions	July 15-16, 2027
Mediation and Case Resolution Efforts	August 13, 2027
Trial Ready	October 1, 2027
Jury Instructions; Witness and Exhibit Lists; Stipulations; Expert Reports	January 10, 2028
Final Pretrial Conference	January 18-19 2028
Jury Trial	February 1, 2028

B. Structured Data Meet and Confer History

On March 18, 2024, Defendants served their objections and responses to Plaintiffs' First Set of Structured Data Requests. Counsel for Plaintiffs and RealPage promptly began meeting and conferring so that Plaintiffs could understand what type of structured data RealPage had, in order to determine whether a significant amount of structured data for all Defendants could be produced by RealPage in lieu of separate productions from each Defendant. Through those meet and confers,

the parties sought to identify areas where RealPage possessed data specific to each Defendant in order to avoid duplicative data productions from individual Defendants that could otherwise be produced by RealPage. This approach was meant to reduce costs and create an efficient structured data discovery process.

On April 18, 2024, counsel for Plaintiffs held an hour-long meet and confer with counsel for RealPage to discuss structured data issues. RealPage's counsel explained that, at a high-level, it held databases for each individual Defendant who used RealPage RMS, and that these Defendant-specific databases contained the data used to create certain pricing recommendations. The parties continued meeting and conferring on April 26 and discussed the overlap between data held by RealPage and data requested from the remaining Defendants. RealPage disclosed that certain types of data—e.g., some fee information and certain non-price concessions—may not be included in RealPage's own data. Nonetheless, RealPage offered to produce client database samples to fulfill Defendants' initial sample production deadline, so that Plaintiffs could evaluate whether these client databases would obviate the need to request full structured data productions from each individual Defendant and could instead narrow the scope for Defendant-specific productions. In order to allow the parties to complete their meet and confers and for RealPage to produce these databases, Plaintiffs consented to an extension of the sample production deadline until May 22, 2024.

The parties memorialized this agreement in the May 10, 2024 Joint Status Report, where they wrote that “RealPage is working to produce data samples to Plaintiffs... which Plaintiffs have agreed, in the interest of efficiency, will satisfy the obligation of other Defendants to produce data samples... to the extent any other Defendant chooses not to produce its own data samples at that time.” Dkt. 909 at 8. The parties went on: “After reviewing the samples produced by RealPage,

Plaintiffs will work with the Defendants that did not make an initial data production to obtain sampling from those Defendants to the extent necessary.” *Id.* The parties disclosed that a subset of Defendants intended to produce their own data samples, and did not intend to rely on the RealPage sample to fulfill their obligations (the “Producing Defendants”).¹ *Id.*

The parties met and conferred again on May 20, 2024, in advance of RealPage’s sample production, and RealPage’s counsel previewed that it would be providing a sample of a client database from each RMS product (AIRM, YieldStar, and LRO), including a sample of every table in each of the client databases produced, totaling over 300 tables per database. RealPage made its structured data sample production on May 22, 2024. RealPage’s data sample was nearly 20 gigabytes and included data and schema from each of RealPage’s revenue management solutions (LRO, YieldStar, and AIRM). The other Producing Defendants also produced data samples in mid-late May 2024, as reported in the June 7, 2024 Joint Status Report. Dkt. 920 at 11.

Upon receipt of data samples from RealPage and the Producing Defendants, Plaintiffs promptly conferred with their consultants to review and analyze the data. Starting in June, structured data discussions occurred on multiple tracks—with RealPage, and with the Producing Defendants.

1. RealPage Sample

On one track, Plaintiffs continued discussing the RealPage structured data sample, meeting and conferring again on June 4, 2024. By July, Plaintiffs’ consultants had reviewed and analyzed the RealPage sample and learned that it was missing elements that were important to developing a comprehensive dataset. Most notably, RealPage’s client database sample appeared to be missing

¹ Those Defendants were BH; Camden; Equity; Essex; Greystar; Highmark; Lantower; Lincoln; UDR; Windsor; and Winn.

tenant detail information.² Without tenant detail information, Plaintiffs understand that lease information cannot be tied to specific tenants, over time and across properties. RealPage's RMS client databases also do not contain certain property-level information, such as building amenities, (which had been requested in Plaintiffs' First Set of RFPs), or cost detail or payment information, because that data is not used by the RMS. After further discussions between Plaintiffs and RealPage, RealPage has agreed to produce the RMS client databases, which includes all data used by the RMS.

Plaintiffs worked with their consultants to determine whether it would still be possible to narrow the data required from each Defendant, and unfortunately, in the interests of ensuring a fulsome dataset for class certification, merits, and notice purposes, determined that a full structured data pull would be needed from each Defendant. Thus, despite their best efforts, Plaintiffs had to restart structured data discussions from scratch with each Defendant in August, putting the parties several months behind schedule. The parties informed the Court of this fact in their August 2, 2024 Joint Status Report: "As noted in the May and June status reports, some Defendants elected to defer providing data samples until Plaintiffs had an opportunity to review data samples provided by RealPage.... Plaintiffs have reviewed RealPage's data samples, and have concluded that they must proceed to collect data samples from each Defendant and are proceeding with meeting and conferring with the remaining Defendants about production of their own data samples." Dkt. 947 at 16. Since August, while Defendants who had not previously produced data samples have engaged in good faith, and many promptly produced data samples and have responded to questions from Plaintiffs, this process necessarily takes time and remains ongoing.

² The AIRM and YieldStar client databases contain unique tenant identification numbers, but otherwise do not contain information identifying those tenants. The LRO client databases contain unique tenant identification numbers and the names of tenants.

2. Producing Defendant Samples

On a separate track, Plaintiffs also worked to review samples from the Producing Defendants. Simultaneous review of samples from RealPage and each of the eleven Producing Defendants, on top of extensive negotiations over non-structured (document) requests with all of the Defendants, was a significant undertaking. Plaintiffs sent correspondence to each non-RealPage Defendant that produced a sample with questions and clarifications about the data. The parties reported on this process in the July 3, 2024 and August 2, 2024 Joint Status Reports, noting the exchange of correspondence from June through August. Dkt. 937 at 9-10 (July 3, 2024 Report: “Plaintiffs have sent questions concerning data samples to certain Defendants who produced their own data samples, and those parties will meet and confer regarding those questions.”); Dkt. 947 at 12 (August 2, 2024 Report: “Plaintiffs have sent questions concerning data samples to certain Defendants who produced their own data samples, those Defendants have responded by July 31, 2024 (or have agreed with Plaintiffs on an extension to respond), and those parties will meet and confer regarding those questions.”).

Given the complexities of the data samples produced, some of the letters were extensive; Plaintiffs’ letter to Equity, for example, included 19 single-spaced pages of questions to clarify where certain data could be found in the sample and whether Plaintiffs’ understanding of certain fields was correct. RealPage and the Producing Defendants responded to Plaintiffs’ questions, and the parties continued discussions of the data samples in good faith, with Plaintiffs often having additional follow-up questions. For some of the Producing Defendants, this correspondence has taken longer than was contemplated in the Case Management Order, which assumed a single set of questions and responses; instead, and through no fault on either side, some responses have led to other questions, as Plaintiffs have tried to understand complicated datasets and ensure that a

final, full structured data pull is complete. Moreover, conferrals with certain Defendants have revealed that additional structured data concerning their properties is in RealPage's possession, including OneSite. This has resulted in additional discussions with RealPage over the production of a OneSite structured data sample, which RealPage recently produced on September 20, 2024. This OneSite data sample consists of nearly 10 gigabytes of data, which Plaintiffs' consultants are currently evaluating.

With respect to both of these tracks, by September, the parties realized that, given the ongoing discussions and continued information exchange regarding the data samples, the October 25, 2024 deadline for completion of structured data productions was no longer feasible. While Defendants could certainly make structured data productions by that time, the parties believe it will be more efficient, and less likely to result in multiple rounds of data pulls, if the parties complete their discussions on what data will be produced before a full data pull occurs. Given this realization, the parties included the following statement in their September 6, 2024 Joint Status Report:

As indicated in the last status report, Plaintiffs believe that RealPage's structured data sample cannot replace structured data samples from each individual Defendant, and so Plaintiffs have conducted initial meet and confers with Defendants who have not already produced structured data samples. 16 Defendants, other than RealPage, have provided such samples. Given that this process remains ongoing, the parties anticipate that they will need to request an extension on the structured data production completion deadline of October 25, 2024. The parties will be in a better position to propose an extension in early October, when the next status report is due.

Dkt. 978 at 15.

Since the September Joint Status Report, the parties have continued their productive discussions. To ensure an efficient process, and to avoid wasting time and resources on multiple data pulls, the parties respectfully request that the structured data discovery deadline be extended until December 20, 2024.

II. LEGAL STANDARD

Pursuant to Rule 16(b)(4), “once a scheduling order is entered, it ‘may be modified only for good cause and with the judge’s consent.’” *Briggs v. Vincent-Bushon*, 2018 WL 4261174, at *2 (M.D. Tenn. July 18, 2018). “[W]hether to amend the scheduling order is committed to the sound discretion of the trial court.” *Id.* (citing *Thompson v. Bruister & Assocs., Inc.*, 2013 WL 1092218, at *4 (M.D. Tenn. Mar. 15, 2013)). “[A] court choosing to modify the schedule upon a showing of good cause, may do so only ‘if it cannot reasonably be met despite the diligence of the party seeking the extension.’” *Leary v. Daeschner*, 349 F.3d 888, 906 (6th Cir. 2003) (quoting Fed. R. Civ. P. 16(b)(4) advisory committee’s note to 1983 amendment).

“The Sixth Circuit has stated that ‘good cause’ under Rule 16(b)(4) ‘is measured by the movant’s diligence in attempting to meet the case management order’s requirements.’” *Wiseman v. Lipinski*, 2011 WL 3236103, at *2 (M.D. Tenn. July 28, 2011) (quoting *Leary*, 349 F.3d at 906–07). Courts in this District have consistently interpreted this to mean that a movant “must show that ‘despite [his] diligence [he] could not meet the original deadline.’” *National Waste Assocs., v. Lifeway Christian Res. of the S. Baptist Convention*, 2022 WL 96523, at *2 (M.D. Tenn. Jan. 10, 2022) (quoting *Shane v. Bunzl Distribution USA, Inc.*, 275 F. App’x 535, 536 (6th Cir. 2008)).

“Another important consideration for a district court deciding whether Rule 16’s ‘good cause’ standard is met is whether the opposing party will suffer prejudice by virtue of the amendment.” *Hosp. Authority of Metro/ Gov’t of Nashville v. Momenta Pharms., Inc.*, 2019 WL 13496984, at *4 (M.D. Tenn. June 7, 2019) (internal quotation omitted). In sum, “[i]n order to demonstrate good cause, the [movant] must show that the original deadline could not reasonably have been met despite due diligence and that the opposing party will not suffer prejudice by virtue

of the amendment.” *Singh v. Vanderbilt Univ. Med. Ctr.*, 2020 WL 6290321, at *2 (M.D. Tenn. Oct. 26, 2020) (citing *Ross v. Am. Red Cross*, 567 F. App’x 296, 306 (6th Cir. 2014)).

III. ARGUMENT

A. Under Rule 16(b)(4), Good Cause Exists to Extend the Structured Data Production Deadline by Two Months.

1. The Parties Diligently and Cooperatively Worked Towards Meeting the Original Deadline.

For several months, all parties have been working diligently and cooperatively through structured data discovery issues as efficiently as possible. The delay here is caused by two separate issues. First, with respect to RealPage and Defendants who deferred producing a sample until Plaintiffs had the opportunity to review RealPage’s data sample, those parties made a good faith effort in an attempt to streamline structured data discovery. Based on the information available at the time, the parties believed that RealPage could produce the lions’ share of structured data in an efficient way, so that individual Defendants could avoid producing a full dataset in response to Plaintiffs’ First Set of Requests for Production for Structured Data. RealPage timely made production of that data, and Plaintiffs’ consultants timely reviewed it. As soon as it became clear that the data was not as complete as the parties had hoped, Plaintiffs promptly reengaged in meet and confer efforts with the remaining Defendants to obtain samples and move that process forward. The parties also kept the Court apprised of their progress through monthly Status Reports, including identifying the potential delay as soon as it materialized.

Second, with respect to the Producing Defendants, the parties have engaged in extensive correspondence, with Plaintiffs attempting to understand complicated datasets that differ from Defendant to Defendant and interpret data fields to ensure that all available data responsive to their requests was captured. Defendants have responded to Plaintiffs’ questions and provided clarity

where needed, including explaining where data fields simply do not exist. This has been an iterative process that has required additional rounds of letters and meet and confers than was contemplated in the original Case Management Order. All parties want to ensure that this process can run through completion before Defendants pull structured data, to avoid the need for seriatim data pulls. A brief extension of two months will allow the time for that completion.

2. No Party Will Suffer Prejudice from the Extension.

Plaintiffs and Defendants jointly seek this request. All parties agree that they will not suffer prejudice from this extension; rather, an extension allows the parties to wrap up their negotiations, for Plaintiffs to understand the scope of data they are receiving, and for Defendants to have the time they need to make their full data productions. Therefore, this element is met.

B. The Proposed Extension Also Complies with Local Rule 16.01(h)(1).

Local Rule 16.01(h)(1) requires that no dispositive motion deadline shall be later than 90 days in advance of the trial date. In the Case Management Order (“CMO”), the Court ordered that any motion to modify the CMO include a statement that the requested extension will still conform to that requirement. (*See* Dkt. 818 at 1.) Per that directive, the parties hereby state that the requested extension to reset the structured data discovery deadline to December 20, 2024 does not impact the current dispositive motion deadlines, and accordingly complies with Local Rule 16.01(h)(1).

IV. CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court extend the deadline for production of structured data from October 25, 2024 to December 20, 2024.

Dated: October 7, 2024

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I hereby certify that on October 7, 2024, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/Dkt. system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

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